



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 22, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0381

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 38605.

The Texas Department of Public Safety (the "Department") received a request for all information relating to a motor vehicle accident. You contend the requested information is excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code.

Included among the documents you seek to withhold is an accident report form that appears to have been completed by a department investigator in accordance with chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The Seventy Fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d,¹ amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414. As amended, section 47(b)(1) provides that:

¹Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71. *See* Trans. Code § 550.065 (release of accident reports). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.* § 25, 1995 Tex. Sess. Law Serv. at 1871. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S., in House Bill 391, remains in effect as current law and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414.

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

Id. (emphasis added). Under this provision, the department "is required to release" a copy of an accident report to a person who provides the department with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor provided the department with the date of the accident, the names of persons involved in the accident, as well as the location of the accident. Thus, you are required to release this information under section 47(b)(1)(D) of article 6701d, V.T.C.S. Although you have raised sections 552.103 and 552.108 of the Government Code as exceptions to disclosure, the Open Records Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989) at 3. The accident report must be released to the requestor.

Included among the documents you submitted is a drawing of what appears to the accident scene. If this document is a part of the accident report, it must be released to the requestor under section 47(b)(1)(D) of article 6701d, V.T.C.S. Because it is unclear if this document is a part of the accident report, however, we will consider the exceptions you raised in the event this document is not part of the accident report.

Section 552.108 excepts from required public disclosure the following information:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). You advise us that the requested information relates to an active criminal investigation. If the drawing of the accident scene is not a part of the accident report, the department may withhold this document under section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS' followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref.: ID# 38605

Enclosures: Submitted documents

cc: Mr. Doug Mungavin
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(w/o enclosures)